

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EBER G. RUTH,

Plaintiff,

v.

LANDON BIRD, et al.,

Defendants.

No. 1:23-cv-00529-NODJ-CDB (PC)

ORDER DISMISSING ACTION WITHOUT
PREJUDICE FOR PLAINTIFF'S FAILURE TO
PAY FILING FEE

Plaintiff Eber G. Ruth is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

I. BACKGROUND

On April 11, 2023, the assigned Magistrate Judge issued findings and recommendations to deny Plaintiff's motion to proceed in forma pauperis. (ECF No. 7.) Specifically, the assigned Magistrate Judge found Plaintiff has accrued three or more strikes under 28 U.S.C. § 1915 and had failed to show he was in imminent danger of serious physical injury. (*Id.*) Plaintiff filed objections on April 21, 2023. (ECF No. 8.)

On June 30, 2023, then assigned District Judge Ana de Alba issued an Order Adopting Findings and Recommendations to Deny Plaintiff's Application to Proceed In Forma Pauperis. (ECF No. 9.) Plaintiff was ordered to pay the \$402 filing fee within 30 days of the date of service of the order. (*Id.* at 3.) Plaintiff then filed an interlocutory appeal on July 14, 2023. (ECF No.

1 10.)

2 On November 7, 2023, the Ninth Circuit Court of Appeals issued its Order dismissing the
3 action for Plaintiff's failure to prosecute because Plaintiff failed to comply with its order that he
4 pay the filing and docketing fees associated with the appeal. (ECF No. 13.) Further, the Order
5 stated: "This order served on the district court shall, 21 days after the date of the order, act as and
6 for the mandate of this court." (*Id.*)

7 Thereafter, on November 29, 2023, the assigned Magistrate Judge issued an Order
8 Directing Plaintiff to Pay Filing Fee Within Fourteen (14) Days. (ECF No. 14.) Plaintiff was
9 cautioned: "Plaintiff is advised that should he fail to pay the required filing fee within 14
10 days of the date of service of this order, this action will be dismissed." (*Id.* at 2, emphasis in
11 original.)

12 On December 1, 2023, the Court issued its Order of Temporary Reassignment to No
13 District Judge (NODJ). (ECF No. 15.)

14 **II. CONCLUSION AND ORDER**

15 Despite the passage of more than 14 days, Plaintiff has failed to pay the required \$402
16 filing fee for this action.

17 Accordingly, IT IS ORDERED that this action be DISMISSED, without prejudice, for
18 Plaintiff's failure to pay the required filing fee. The Clerk of the Court shall terminate any
19 pending motions and CLOSE this case.

20 DATED: January 18, 2024.

21 
22 Jennifer Ann Miller
23 CHIEF UNITED STATES DISTRICT JUDGE

24

25

26

27

28